

ORIGINAL

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION – FELONY BRANCH

UNITED STATES OF AMERICA : Case No. 2010CF1022035 P 12: 21
v. : Judge Lynn Leibovitz
JEROME E. BAILEY : Sentencing: November 18, 2011

UNITED STATES'S SENTENCING MEMORANDUM

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully offers the following information and argument in connection with the sentencing in the above-captioned case. On September 14, 2011, defendant Jerome Bailey pled guilty to Second Degree Murder While Armed. As set forth in the Presentence Report ("PSR"), the voluntary sentencing guideline range for Second Degree Murder While Armed is twelve to twenty-four years of incarceration. As part of the plea agreement, the parties agreed to a sentencing range of sixteen to twenty years of incarceration, which is the midrange of the applicable voluntary sentencing guidelines. For the reasons set forth below, the government respectfully requests that the Court accept the plea agreed to by the parties and sentence the defendant to twenty years of incarceration.

I. Nature of the Offense.

As the defendant agreed at the plea hearing, during the months preceding Friday, November 5, 2010, the defendant, Jerome E. Bailey, had been in a sexual relationship with a witness ("W-1"). The defendant was very jealous of other men during the course of that relationship and constantly questioned W-1's relationships with other men. During this time period, the defendant confronted W-1 regarding her relationship with an individual known as Rico Matthews. W-1 denied having any sexual relationship with Mr. Matthews. The defendant

did not believe W-1 and punched her in the eye, knocking her to the ground. The next day, the defendant confronted W-1 about Mr. Matthews again, stating, "I'll smoke his ass!", which W-1 understood to mean that the defendant would kill Mr. Matthews.

On the morning of Friday, November 5, 2010, the defendant repeatedly called W-1 and accused her of arranging a sexual encounter with Mr. Matthews for \$250. After W-1 blocked the defendant's calls, the defendant began calling Mr. Matthews's phone. There were approximately 24 calls between the defendant and Mr. Matthews. The last call consisted of the defendant dialing Mr. Matthews at 1:06 p.m.

That afternoon, Mr. Matthews was inside of a single family house located at 4019 1st Street, S.E., Washington, D.C. He was upstairs playing video games with other individuals in the house. At approximately 1:45 p.m., the defendant arrived at the house, and Mr. Matthews came downstairs and met the defendant at the rear door. They had a heated argument inside of the house. The defendant then shot Mr. Matthews multiple times with a .380 caliber semiautomatic pistol. As Mr. Matthews tried to run away, the defendant pursued him throughout the first floor of the house and continued to shoot at him, ultimately striking him in the right flank, left buttock, right hip, and right arm. The defendant fled out the rear door of the house. The police investigation revealed no casings from a second gun and no evidence that the defendant had been threatened in any way during the argument.

II. Impact on Victims and Community.

The government has received numerous victim impact statements on behalf of Mr. Matthews that are being provided to the Court and the defendant. It is clear that numerous friends and family of Mr. Matthews feel a great loss as a result of this tragedy. To his son's great

disappointment, Mr. Matthews will never see his first grandchild. His mother, who had to experience the unnatural experience of her own child predeceasing her, is completely distraught over the senseless loss of her son's life.

III. Defendant's Criminal History.

The defendant was twenty years old at the time of this offense and has a limited criminal history. He pled guilty to possession of marijuana in Case No. 2010CMD011351 on October 7, 2010, and he was sentenced to ten months of probation. He flagrantly disobeyed all the conditions of his probation by testing positive for drug use (two positives for marijuana and three positives for PCP), refusing drug treatment, failing to keep scheduled appointments, and letting his GPS device run low. By the time of this offense, he had let his GPS device run so low that CSOSA could not verify his whereabouts. After the murder on November 5, 2010, the defendant became a complete loss of contact. His probation was revoked on November 29, 2010, based on the technical violations just described.

IV. Defendant's Personal Characteristics.

According to the PSR, the defendant was raised by his paternal grandmother, Theresa Parker, after his mother lost custody of him at age five. Although he reports that his mother was in an abusive relationship, he also stated that he was never abused as a child. To the contrary, Ms. Parker reports that she worked hard to provide a safe, stable, drug and alcohol free environment for the defendant, and enforced rules to maintain structure in the home. The defendant was never abused nor neglected while in Ms. Parker's care, and Ms. Parker always supported him financially.

Notwithstanding the stable environment that Ms. Parker tried to provide for the

defendant, by the eighth grade, the defendant was expelled from school. After that, he began to spend more time with his mother, who allowed him to hang out in the streets, smoke marijuana/PCP “dippers” and sell drugs. He gravitated toward negative peers and began to hide his life from his grandmother. He became so secretive that he did not even inform his grandmother when he had a child. As of the time of his arrest, the defendant was unemployed. He reported that he has never held stable employment.¹

V. Other Factors in Support of Proposed Sentencing Range

The government agreed to the proposed sentencing range of sixteen to twenty years because the government believes the defendant deserves some reduction in his sentence given his limited criminal history and his early acceptance of responsibility. That said, the evidence supports a sentence at the high end of the proposed sentencing range, which already takes into account the factors just described. Having had a chance to review the PSR, the government has concluded that there are no mitigating factors that would warrant a sentence at the low end of the proposed sentencing range.²

The defendant would have the Court believe that Mr. Matthews is partly to blame for his

¹ There is some suggestion that the defendant has a learning disability that was ignored by his grandmother and may have been a factor contributing to the behavior described above. The extent of any such disability is unclear, however. On the one hand, he managed to earn a high school diploma after being expelled. On the other hand, he reports that he receives mental health disability benefits, which would have required some kind of diagnosis. According to the PSR writer, however, there is no history of him receiving SSI payments and he said that he does not know where his payments are delivered. Whatever learning disability he may have or the extent of it, it is no excuse for his conduct in this case.

² According to the PSR writer, after the defendant pled guilty, he was repeatedly stabbed at the D.C. Jail – in his arm, shoulder, lower back, and four times to his head. The facts of that stabbing and the identity of the perpetrator are unknown to the government. While distressing, this incident is not relevant to the defendant’s ultimate sentence.

own demise. According to the defendant, because Mr. Matthews was jealous of the defendant's sexual relationship with W-1, Mr. Matthews had previously called the defendant names and threatened to kill him. While the government's investigation showed that Mr. Matthews was romantically or sexually interested in W-1, it never revealed any threatening or negative conduct being initiated by Mr. Matthews toward the defendant. To the contrary, the government's investigation showed that the defendant was very possessive of W-1 and jealous of her contacts with other men (even nonsexual contact), including Mr. Matthews; and that the defendant was at all times the aggressor. The defendant was described by witnesses as continually questioning W-1 about her relationships with other men, including Mr. Matthews; as grabbing her cell phone to see who was communicating with her; as physically assaulting W-1 because of his jealousy; and as confronting Mr. Matthews about whether he was sleeping with W-1 and telling Mr. Matthews that he "does not play."³ The defendant behaved in this fashion notwithstanding his statement to the PSR writer acknowledging that his relationship with W-1 was nonexclusive.⁴ In sum, the defendant's decision to repeatedly shoot and kill Mr. Matthews was the product of nothing more than rage arising from his admitted feeling that Mr. Matthews had "disrespected" him by trying without success to have a romantic or sexual relationship with W-1, a woman who had not promised the defendant any commitment at all.

³ According to the government's investigation, in response to the defendant's statement that he did not play, Mr. Matthews told the defendant that he, too, had guns, *i.e.*, that he would defend himself if the defendant escalated the situation to a violent confrontation with weapons. Of course, that did not prove to be the case.

⁴ The government's investigation revealed no evidence that W-1 ever had a sexual relationship with Mr. Matthews. This is corroborated by the defendant's own statement that W-1 was "carrying" Mr. Matthews.

Even if it were true that Mr. Matthews had initiated threats against the defendant in the past, as the defendant would have the Court believe, that does not in anyway justify his decision to seek out Mr. Matthews, go to the house where Mr. Matthews was playing video games in a rage, and shoot Mr. Matthews (who was unarmed) multiple times, even as Mr. Matthews turned and ran away from him throughout the first floor of the house.

Whether the defendant even feels remorse for his actions is ambiguous. According to the PSR writer, the defendant "showed no emotion and appeared disconnected form the fact that a human life was taken in such a senseless way." He rationalized his actions based on "his opinion of the situation that led to the death of the victim." However, he did state that he was very remorseful and he did quickly accept the very first plea offer extended by the government.

CONCLUSION

WHEREFORE, the government respectfully requests that the Court sentence the defendant to twenty years of incarceration.

Respectfully submitted,
RONALD C. MACHEN JR.
UNITED STATES ATTORNEY

By:



EMILY A. MILLER
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the 14th day of November, 2011, a copy of the foregoing was served by email upon the following:

Dana Page, Esq.
The Public Defender Service
633 Indiana Avenue, N.W.
Washington, D.C. 20004
dpage@pdsdc.org

By:



EMILY A. MILLER
Assistant United States Attorney